IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA ASHEVILLE DIVISION 1:06CV206-03-MU

| MALCOLM WRIGHT aka Malcolm Y. Azariah, |) |
|---|-------------|
| Plaintiff, |) |
| V. |))) |
| CHARLES McCURRY, et. al., |) ORDER |
| Defendants. |) |

THIS MATTER is before this Court on Plaintiff's motion to reopen the appeal period.

(Doc. No. 42.)

On July 5, 2006 Plaintiff filed a 261 page Complaint pursuant to 42 U.S.C. § 1983 against 29 defendants. The Court granted Defendants' motion to dismiss on May 18, 2007. On May 21, 2008 Plaintiff sent a letter to the Court stating that he would like to know what happened in his case. (Doc. No. 36.) The Court mailed Plaintiff a copy of the Order dismissing his case. Plaintiff sent a letter to the Court on June 6, 2008 asking how he could file an appeal of this Court's May 18, 2007 Order. (Doc. No. 37.) The Court construed Plaintiff's letter as a Notice of Appeal and forwarded such notice to the Fourth Circuit Court of Appeals. (Doc. No. 38.) On July 28, 2008, the Fourth Circuit dismissed Plaintiff's appeal as untimely. Plaintiff now

¹ The dockets reflects that this Court's May 18, 2007 Order was returned to the Court on June 1, 2007 with a note that Plaintiff was "not at institution." The clerk searched the Bureau of Prisons website and learned that Plaintiff was "in transit." On June 19, 2007, the Clerk resent the Court's Order to Plaintiff at his new location. Such Order was not returned to the Court again as undeliverable.

asks this Court to reopen his appeal period. Plaintiff states that he was transferred to Federal Correctional Complex in Terre Haute, Indiana in September 2006 and On October 2, 2006 he was assaulted in prison and was admitted to the hospital for four days.²

The Fourth Circuit has already ruled that Plaintiff's Appeal was untimely. This Court declines to reopen Plaintiff's time to file an appeal. Therefore Plaintiff's motion to reopen the time to file an appeal is denied.

SO ORDERED.

Signed: August 11, 2008

Graham C. Mullen

United States District Judge

² Plaintiff states that he was admitted to the hospital and treated for four days following an assault on October 2, 2006. However, the Court notes that its Order dismissing Plaintiff's case was not entered until May 18, 2007, seven months after Plaintiff's assault.